

CONTRACT	
NO.	<u>01-04-A-134777-0804</u>
AMENDMENT NO.	_____
This number must appear on all Invoices, correspondence and documents pertaining to this contract.	

A. G. Contract No. KR03-0012TRN  
ADOT ECS File: JPA 02-151  
Project: STP-000-6 (148) P  
Section: Contractor's Way  
TRACS No.: SR177 01C  
BUDGET SOURCE- STIP & TIP  
Arizona Rail Car-AAR/DOT No. 741-296-W

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
PIMA COUNTY, ARIZONA

THIS AGREEMENT is entered into September 8, 2004 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and PIMA COUNTY acting by and through its BOARD OF SUPERVISORS, (the "County").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The County is empowered by Arizona Revised Statutes Section 11-951 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the County.
3. The Arizona Corporation Commission is empowered by Arizona Revised Statutes Section 40-337 to participate in the funding of this project, and has authorized funds for this project.
4. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.
5. Such project within the boundary of the County has been selected by the County; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.
6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the County by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 27049  
Filed with the Secretary of State  
Date Filed: 09/08/04  
Jenice K. Brewer  
Secretary of State

By: Darryl D. Greenwald

7. The work embraced in this agreement and the estimated costs are as follows: Upgrade Railroad Crossing (Contractor's Way AAR/DOT No. 741-296-W).

Preliminary and Construction Engineering	\$ 18,000.00
Install Flashers and Gates (by railroad forces)	<u>\$ 87,915.00</u>
<b>Estimated Total Protection Work</b>	<b>\$105,915.00</b>
 Furnish and Install Concrete Crossing Surface (By railroad forces)	 <u>\$ 94,480.00</u>
<b>Estimated Total Project Cost</b>	<b>\$200,395.00</b>
 Federal Aid Funds @ 94.3% of \$200,395.00	 \$188,973.00
AZ Corp. Comm. Funds @ 5.7% of \$105,915.00	<u>\$ 6,037.00</u>
<b>Estimated County Funds @ 5.7% of \$94,480.00</b>	<b>\$ 5,385.00</b>

8. The parties hereto agree and acknowledge to the following conditions: 1) The amounts referenced in this agreement are subject to change; 2) The estimated amounts can change substantially; and, 3) Both parties will perform their responsibilities consistent with the agreement.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The State shall:**

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. If such project is approved for construction by FHWA and the funds are available for construction of the project, with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the County's deposit unless and until so authorized in writing by the County and approved by FHWA.

### **2. The County shall:**

a. Acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

b. Once acquired, remove from the County right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed there from.

c. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the County right of way. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use.

d. Upon completion of construction, provide for, at its own cost, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities), to include, but not

limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

e. Mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work.

f. By such regulation as it may by ordinance provide, the County shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

### **III MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims to the extent permitted by law. Such assumption of the responsibility by the County for the benefit of the State in no way acts as a waiver by the County for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that to the extent permitted by law, the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the County agrees to furnish and provide the State with County funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received. If applicable.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order

Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:


Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Pima County  
County Manager  
130 W. Congress, 10<sup>th</sup> Floor  
Tucson, AZ 85701

11. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**PIMA COUNTY**

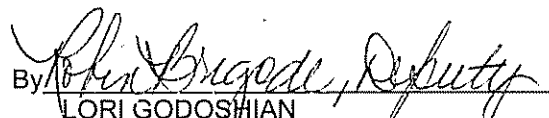
By   
SHARON BRONSON  
Chairman of the Board AUG 3 - 2004

**STATE OF ARIZONA**

Department of Transportation

By   
SUSAN TELLEZ  
Contract Administrator


ATTEST:

By   
LORI GODOSHIAN  
Clerk of the Board

APPROVAL OF THE PIMA COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the PIMA COUNTY and declare this Agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 8<sup>th</sup> day of July, 2004.

  
Deputy County Attorney  
Attorney

RESOLUTION NO. 2004 - 204

**RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN PIMA COUNTY AND THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION (ADOT), WHICH PROVIDES FOR THE INSTALLATION OF SAFETY IMPROVEMENTS AT THE CONTRACTOR'S WAY RAILROAD CROSSING, PIMA COUNTY, ARIZONA, UTILIZING FEDERAL HIGHWAY ADMINISTRATION (FHWA), ARIZONA CORPORATION COMMISSION, AND COUNTY FUNDS.**

(DISTRICT 2)

WHEREAS, Pima County intends to construct warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances at the Union Pacific Railroad intersection with Contractor's Way, Pima County, Arizona, and

WHEREAS, Pima County will, upon completion of construction of said improvements and appurtenances provide proper maintenance of the improvements, and

WHEREAS, ADOT intends to acquire FHWA and the Arizona Corporation Commission funds for the design and construction of the aforementioned improvements and appurtenances, and

WHEREAS, Pima County has determined it to be in the best interests of the public to enter into an intergovernmental agreement for the purpose of acquiring the FHWA and Arizona Corporation Commission funds for the Project from ADOT.

**NOW, THEREFORE, UPON MOTION DULY MADE, SECONDED AND CARRIED, BE IT RESOLVED THAT:**

1. Pima County shall enter into the intergovernmental agreement (JPA 02-151) with ADOT for the purpose of funding the design, construction, and maintenance of the improvements and appurtenances at the railroad crossing at Contractor's Way, Pima County, Arizona.
2. The Chair of this Board is hereby authorized and directed to sign the intergovernmental agreement (JPA 02-151) with the Arizona Department of Transportation.
3. The various Pima County officers, agents, and employees are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

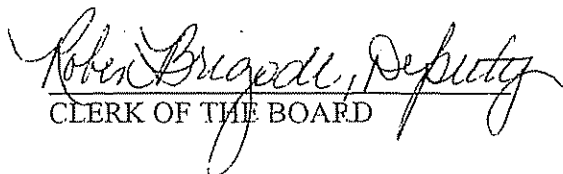
**PASSED, ADOPTED AND APPROVED** this 3RD day of AUGUST 2004.

PIMA COUNTY BOARD OF SUPERVISORS



CHAIRMAN AUG 3 - 2004

ATTEST:



CLERK OF THE BOARD

APPROVED AS TO FORM:



DEPUTY COUNTY ATTORNEY

2070-04



**Office of the Attorney General  
State of Arizona**

Terry Goddard  
Attorney General

CIVIL DIVISION  
Transportation Section  
Writer's Direct Line: 602 542 8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR03-0012TRN (JPA 02-151), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 31, 2004

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script that reads "Susan Davis".

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section